

**Stafford Construction Co. and International Union
of Operating Engineers, Local No. 9, AFL-
CIO, Case 27-CA-6025**

April 29, 1982

**SUPPLEMENTAL DECISION AND
ORDER**

**BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER**

On August 8, 1980, the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding in which the Board, *inter alia*, ordered Respondent to make whole certain discriminatees for losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended. On April 29, 1981, Respondent and the General Counsel entered into a stipulation that the Board's Order is binding. A controversy having arisen over the amount of backpay due under said Order the Regional Director for Region 27, on November 20, 1981, issued and duly served on Respondent a backpay specification and notice of hearing alleging the amounts of backpay due the discriminatees under the Board's Order and notifying Respondent that it should file a timely answer complying with the Board's Rules and Regulations, Series 8, as amended. Respondent failed to file an answer to the backpay specification by December 5, 1981, the expiration date for said filing under the Board's Rules and Regulations.

Thereafter, on December 17, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 28, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's motion should not be granted. Respondent failed to file a response to the Notice To Show Cause.

On January 12, 1982, over 1 month after the deadline set for filing an answer, Respondent filed a purported answer to the backpay specification and a "[r]equest for production of documents" with the Board. Respondent refiled copies of these two documents on February 16, 1982.²

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto

* * * * *

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on Respondent on or about November 20, 1981, specifically states that Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 27 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

As noted above, Respondent filed an untimely answer, and failed to file a response to the Notice To Show Cause. Therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. As Respondent did not file a timely answer to the specification and has not offered any explanation for its failure to do so, in accordance with the rule set forth above, the allegations of the specification are deemed to be true and are so found by the Board without the taking of evidence in support of the said allegations.

Accordingly, we grant the General Counsel's Motion for Summary Judgment and conclude that the net backpay due each of the discriminatees is as stated in the specification.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

¹ 250 NLRB 1469.

² The Board, through the Office of the Executive Secretary, contacted counsel for the General Counsel and asked for a position statement regarding the documents submitted by Respondent. Thereafter, on February 25, 1982, counsel for the General Counsel filed a statement which stated that said documents failed to meet the requirements of the Board's Rules and Regulations both as to content and timeliness, and reiterated the request that summary judgment be granted.

lations Board hereby orders that the Respondent, Stafford Construction Co., Grand Junction, Colorado, its officers, agents, successors, and assigns, shall make whole each of the discriminatees named below by payment to each of them of the amount specified as net backpay, with interest thereon computed in the manner prescribed in *Florida Steel Corporation*,³ 231 NLRB 651 (1977), until payment

of all backpay due is made as provided for in *F. W. Woolworth Company*, 90 NLRB 289 (1950), less tax withholdings required by Federal and state laws:

Jack Luther	\$17,261.93
Steven Smith	4,847.65
Alvin Stevens	21,843.15
George Lovato	16,449.64
Jim Gillian	21,416.08

³ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Member Jenkins would award interest on the backpay owed the discriminatees on the basis of the position set forth in his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).